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(908) 298-4000

NOV 22 2004

**FACSIMILE TRANSMITTAL SHEET**

TO:	<b>Mail Stop: AMENDMENT</b>
	FAX NUMBER: <b>9-1-703-872-9306</b>
	<b>Commissioner for Patents</b>

FROM:	<b>Sandy Zaradic, Ph.D., Counsel, Patents</b>
	PHONE NUMBER: <b>(908) 298-7221</b>

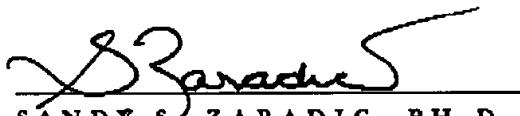
TOTAL NO. OF PAGES INCLUDING COVER	DATE
<b>12</b>	<b>November 22, 2004</b>

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**Re:** Application No: 10/786,886  
**Filing Date:** 02/25/2004  
**First Named Inventor:** Andrews *et al*.  
**Examiner:** Bernhardt, E. B.; **Art Unit:** 1624  
**Attorney Docket No.: CD0787Q1**

Transmitted herewith are:

- Response Transmittal - 1 page
- Amendment and Response - 6 pages
- Terminal Disclaimer to Obviate a Double Patenting Rejection over a "Prior" Patent - 1 page
- Fee Transmittal form - 1 page **IN DUPLICATE**
- Certificate of Fax Transmission - 1 page
- Fax Cover Sheet - 1 page

  
 S A R A D I C  
 SANDY S. ZARADIC, PH.D.  
 COUNSEL, PATENTS  
 REGISTRATION NO. 45,997

48419\_1.DOC

PHONE: (908) 298-7221

FAX: (908) 298-5388

Attorney Docket No.: CD0787Q1

Application No.: 10/786,886

Filing Date: 02/25/2004

First Named Inventor: Andrews et al.

NOV 22 2004

PTO/SB/17 (08-03)

Approved for use through 07/31/2006, OMB 0651-0031  
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Document(s) being transmitted:

Transmittal form - 1 page

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Fee Transmittal form - 1 page IN DUPLICATE

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PTO/SB/21 (02-04)

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**TRANSMITTAL  
FORM**

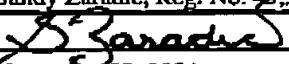
(To be used for all correspondence after initial filing.)

<b>TRANSMITTAL FORM</b>  (To be used for all correspondence after initial filing.)	Application Number	10/786,886	
	Filing Date	02/25/2004	
	First Named Inventor	Andrews et al.	
	Art Unit	1624	
	Examiner Name	Bernhardt, Emily B.	
Total Number of Pages in This Submission	12	Attorney Docket Number	CD0787Q1

**ENCLOSURES (Check all that apply)**

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input checked="" type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (Please Identify below):  Cert. of Fax Transmission-1 page; Fax Cover page-1 page
Remarks		

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Pfirm or Individual name	Sandy Zaradic, Reg. No. 45,997
Signature	
Date	November 22, 2004

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Signature	Date	

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PTO/SB/17 (10-04)  
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# FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 110.00)

## Complete If Known

Application Number	10/786,886
Filing Date	02/25/2004
First Named Inventor	Andrews et al.
Examiner Name	Bernhardt, Emily B.
Art Unit	1624
Attorney Docket No.	CD0787Q1

## METHOD OF PAYMENT (check all that apply)

 Check  Credit card  Money Order  Other  None
 Deposit Account:

Deposit Account Number 19-0365  
Deposit Account Name Schering-Plough Corporation

The Director is authorized to: (check all that apply)  
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## FEE CALCULATION

## 1. BASIC FILING FEE

Large Entity	Small Entity	Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1001 790	2001 395	Utility filing fee			
1002 350	2002 175	Design filing fee			
1003 550	2003 275	Plant filing fee			
1004 790	2004 395	Reissue filing fee			
1005 160	2005 80	Provisional filing fee			
SUBTOTAL(I) (\$)					

## 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Independent Claims	Multiple Dependent	Fee from Extra Claims below	Fee Paid
			-20" =	
			- 3- =	

Large Entity	Small Entity	Fee Code (\$)	Fee Description
1202 18		2202 9	Claims in excess of 20
1201 88		2201 44	Independent claims in excess of 3
1203 300		2203 150	Multiple dependent claim, if not paid
1204 88		2204 44	Reissue independent claims over original patent
1205 18		2205 9 **	Reissue claims in excess of 20 and over original patent
SUBTOTAL (s) (\$)			

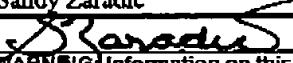
\* or number previously paid, if greater; For Reissues, see above

## 3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Code (\$)	Fee Description	Fee Paid
1501 1,370		2501 685	Surcharge - late filing fee or oath	
1502 490		2052 25	Surcharge - late provisional filing fee or cover sheet	
1503 660		1053 130	Non-English specification	
1460 130		1812 2,520	For filing a request for ex parte reexamination	
1807 50		1804 920*	Requesting publication of SIR prior to Examiner action	
1808 180		1805 1,840*	Requesting publication of SIR after Examiner action	
8021 40		1225 110	Extension for reply within first month	
1809 790		1225 215	Extension for reply within second month	
1810 790		1225 380	Extension for reply within third month	
1801 790		1225 765	Extension for reply within fourth month	
1502 900		1225 1,040	Extension for reply within fifth month	
SUBTOTAL (s) (\$)				

Other fee (specify) Terminal Disclaimer over Prior Patent \$ 110.00

• Reduced by Basic Filing Fee Paid \$ 110.00

(Complete if applicable)			
Name (Print/Type)	Sandy Zaradic	Registration No. (Attorney/Agent)	45,997
Signature		Telephone	908-298-7221

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PROSB/17 (10-04)

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# FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 110.00)

Complete if Known

Application Number	10/786,886
Filing Date	02/25/2004
First Named Inventor	Andrews et al.
Examiner Name	Bernhardt, Emily B.
Art Unit	1624
Attorney Docket No.	CD0787Q1

## METHOD OF PAYMENT (check all that apply)

 Check    Credit card    Money Order    Other    None
 Deposit Account:

Deposit Account Number	19-0365
Deposit Account Name	Schering-Plough Corporation

The Director is authorized to: (check all that apply)

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## FEE CALCULATION

## 1. BASIC FILING FEE

Large Entity Small Entity

Fee	Fee	Fee Description	Fee Paid
Code (\$)	Code (\$)		
1001 790	2001 395	Utility filing fee	
1002 350	2002 175	Design filing fee	
1003 550	2003 275	Plant filing fee	
1004 790	2004 395	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
<b>SUBTOTAL()</b>		<b>(\$)</b>	

## 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	-20*	=	X	Fee from Extra Claims below	Fee Paid
Independent Claims					
Multiple Dependent					

Large Entity Small Entity

Fee	Fee	Fee Description
Code (\$)	Code (\$)	
1202 18	2202 9	Claims in excess of 20
1201 88	2201 44	Independent claims in excess of 3
1203 300	2203 150	Multiple dependent claim, if not paid
1204 88	2204 44	Reissue independent claims over original patent
1205 16	2205 9	** Reissue claims in excess of 20 and over original patent
<b>SUBTOTAL (s)</b>		<b>\$</b>

\* or number previously paid, if greater; For Reissues, see above

## 3. ADDITIONAL FEES

Large Entity Small Entity

FEE	FEE	Fee Description	Fee Paid
Code (\$)	Code (\$)		
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 430	2252 215	Extension for reply within second month	
1253 980	2253 490	Extension for reply within third month	
1254 1,530	2254 765	Extension for reply within fourth month	
1255 2,080	2255 1,040	Extension for reply within fifth month	
1401 340	2401 170	Notice of Appeal	
1402 340	2402 170	Filing a brief in support of an appeal	
1403 300	2403 150	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,390	2453 665	Petition to revive - unintentional	
1501 1,370	2501 685	Utility issue fee (or reissue)	
1502 490	2502 246	Design issue fee	
1503 660	2503 330	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 60	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 790	2809 395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 790	2810 395	For each additional invention to be examined (37 CFR 1.129(b))	
1801 790	2801 395	Request for Continued Examination (RCE)	
1802 900	1802 900	900 Request for expedited examination of a design application	
Other fee (specify)		Terminal Disclaimer over Prior Patent	110.00
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(Complete if applicable)			
Name (Print/Type)	Sandy Zaradic	Registration No. (Agent)	45,997 Telephone 908-298-7221
Signature		Date	November 22, 2004

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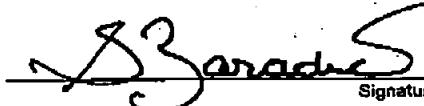
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PTO/SB/28 (09-04)

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<b>TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING REJECTION OVER A "PRIOR" PATENT</b>		Docket Number (Optional) CD0787Q1
In re Application of: <u>Andrews et al.</u>		
Application No.: <u>10/786,886</u>		
Filed: <u>02/25/2004</u>		
For: <u>Crystalline antifungal polymorph</u>		
<p>The owner*, <u>Schering Corporation</u>, of <u>100</u> percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. <u>6,713,481</u> as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.</p> <p>In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:</p> <ul style="list-style-type: none"> <li>expires for failure to pay a maintenance fee;</li> <li>is held unenforceable;</li> <li>is found invalid by a court of competent jurisdiction;</li> <li>is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;</li> <li>has all claims canceled by a reexamination certificate;</li> <li>is released; or</li> <li>is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.</li> </ul>		
Check either box 1 or 2 below, if appropriate.		
<p>1. <input type="checkbox"/> For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.</p> <p>I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.</p> <p>2. <input checked="" type="checkbox"/> The undersigned is an attorney or agent of record. Reg. No. <u>45,997</u></p>		
 Signature		<u>11/22/04</u> Date
<u>Sandy Zaradic</u> Typed or printed name		
<u>908-298-7221</u> Telephone Number		
<input checked="" type="checkbox"/> Terminal disclaimer fee under 37 CFR 1.20(d) included.		
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